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7

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/09-05

13 ROADHAUS MOTORSPORT
RONALD URBAN MUGNAINI,
14 a.k.a. RONALD MUGNAINI, OWNER
10638 Ramona Avenue
Montclair, CA 91763-4119

A C C U S A T I O N

SMOG CHECK

15 Automotive Repair Dealer Reg. No. ARD 125948
Smog Check Station License No. RC 125948
16 Official Lamp Station License No. LS 125948
Official Brake Station License No. BS 125948

17 and
18

19 RONALD MUGNAINI
16210 Suttles Drive
Riverside, CA 92504

20 Advanced Emission Specialist Technician License
21 No. EA 028104

22 Respondents.
23

24 Complainant alleges:

25 **PARTIES**

26 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official
27 capacity as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
28 Affairs.

1 **Roadhaus Motorsport:**

2 2. On or about June 30, 1986, the Director of Consumer Affairs ("Director")
3 issued Automotive Repair Dealer Registration Number ARD 125948 to Ronald Urban Mugnaini,
4 also known as Ronald Mugnaini ("Respondent"), owner of Roadhaus. Between July 18, 1994,
5 and June 30, 1995, Respondent's business name was changed to Roadhaus Motorsport.
6 Respondent's automotive repair dealer registration was in full force and effect at all times
7 relevant to the charges brought herein and will expire on June 30, 2009, unless renewed.

8 3. On or about July 28, 1994, the Director issued Smog Check Station
9 License Number RC 125948 to Respondent. Respondent's smog check station license was in
10 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
11 2009, unless renewed.

12 4. On or about February 23, 1998, the Director issued Official Lamp Station
13 License Number LS 125948 to Respondent. Respondent's lamp station license was in full force
14 and effect at all times relevant to the charges brought herein and will expire on June 30, 2009,
15 unless renewed.

16 5. On or about February 23, 1998, the Director issued Official Brake Station
17 License Number BS 125948 to Respondent. Respondent's brake station license was in full force
18 and effect at all times relevant to the charges brought herein and will expire on June 30, 2009,
19 unless renewed.

20 **Ronald Mugnaini:**

21 6. In or about 1996, the Director issued Advanced Emission Specialist
22 Technician License Number EA 028104 to Respondent. Respondent's advanced emission
23 specialist technician license was in full force and effect at all times relevant to the charges
24 brought herein and will expire on April 30, 2010, unless renewed.

25 **JURISDICTION**

26 7. Business and Professions Code ("Bus. & Prof. Code") section 9884.7
27 provides that the Director may invalidate an automotive repair dealer registration.

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1 8. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the
2 expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a
3 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
4 registration temporarily or permanently.

5 9. Bus. & Prof. Code section 9889.1 provides, in pertinent part, that the
6 Director may suspend or revoke any license issued under Articles 5 and 6 (commencing with
7 section 9887.1) of the Automotive Repair Act.

8 10. Bus. & Prof. Code section 9889.7 provides, in pertinent part, that the
9 expiration or suspension of a license by operation of law or by order or decision of the Director
10 or a court of law, or the voluntary surrender of a license shall not deprive the Director of
11 jurisdiction to proceed with any disciplinary proceedings.

12 11. Health and Safety Code ("Health & Saf. Code") section 44002 provides,
13 in pertinent part, that the Director has all the powers and authority granted under the Automotive
14 Repair Act for enforcing the Motor Vehicle Inspection Program.

15 12. Health & Saf. Code section 44072.6 provides, in pertinent part, that the
16 expiration or suspension of a license by operation of law, or by order or decision of the Director
17 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
18 the Director of jurisdiction to proceed with disciplinary action.

19 **STATUTORY PROVISIONS**

20 13. Bus. & Prof. Code section 9884.7 states, in pertinent part:

21 (a) The director, where the automotive repair dealer cannot show there
22 was a bona fide error, may refuse to validate, or may invalidate temporarily or
23 permanently, the registration of an automotive repair dealer for any of the
24 following acts or omissions related to the conduct of the business of the
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

25 (1) Making or authorizing in any manner or by any means whatever any
26 statement written or oral which is untrue or misleading, and which is known, or
27 which by the exercise of reasonable care should be known, to be untrue or
misleading.

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1 (4) Any other conduct which constitutes fraud.

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3 (c) Notwithstanding subdivision (b), the director may refuse to
4 validate, or may invalidate temporarily or permanently, the registration
5 for all places of business operated in this state by an automotive repair
6 dealer upon a finding that the automotive repair dealer has, or is, engaged
7 in a course of repeated and willful violations of this chapter, or regulations
8 adopted pursuant to it.

9 14. Bus. & Prof. Code section 9889.3 states, in pertinent part:

10 The director may suspend, revoke, or take other disciplinary action
11 against a license as provided in this article [Article 7 (commencing with
12 section 9889.1) of the Automotive Repair Act] if the licensee or any partner,
13 officer, or director thereof:

14

15 (d) Commits any act involving dishonesty, fraud, or deceit
16 whereby another is injured . . .

17 15. Bus. & Prof. Code section 9889.9 states that "[w]hen any license has been
18 revoked or suspended following a hearing under the provisions of this article [Article 7
19 (commencing with section 9889.1) of the Automotive Repair Act], any additional license issued
20 under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or
21 suspended by the director."

22 16. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board"
23 includes "bureau," "commission," "committee," "department," "division," "examining
24 committee," "program," and "agency", and that a "license" includes "registration" and
25 "certificate."

26 17. Health & Saf. Code section 44072.2 states, in pertinent part:

27 The director may suspend, revoke, or take other disciplinary action
28 against a license as provided in this article if the licensee, or any partner,
officer, or director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection
Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

. . . .

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1 (c) Violates any of the regulations adopted by the director pursuant to
2 this chapter.

3 (d) Commits any act involving dishonesty, fraud, or deceit whereby
4 another is injured . . .

5 18. Health & Saf. Code section 44072.10 states, in pertinent part:

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7 (c) The department shall revoke the license of any smog check technician
8 or station licensee who fraudulently certifies vehicles or participates in the
9 fraudulent inspection of vehicles. A fraudulent inspection includes, but is not
10 limited to, all of the following:

11 (1) Clean piping, as defined by the department . . .

12 19. California Code of Regulations, title 16, section 3340.41.5 states, in
13 pertinent part:

14 A tampered emissions control system is an emissions control system
15 which is missing, modified or disconnected. An emissions control system which
16 has a missing, modified, or disconnected emissions related component is also
17 deemed a tampered emissions control system. For purposes of the visual emission
18 control system inspection pursuant to Health and Safety Code Section 44012(a),
19 the terms missing, modified and disconnected are defined as follows:

20 (a) Missing. A missing emissions control system or component is one
21 which has been removed from the vehicle or engine.

22 (b) Modified. An emissions control system is deemed to have been
23 modified if:

24 (1) the system has been disabled, even though it is present and properly
25 connected to the engine and/or vehicle;

26 (2) an emissions related component of the system has been replaced by a
27 component not marketed by its manufacturer for street use on the vehicle; or

28 (3) an emissions related component of the system has been changed such
that there is no capacity for connection with or operation of other emissions
control components or systems . . .

20. Health & Saf. Code section 44072.8 states that when a license has been
revoked or suspended following a hearing under this article, any additional license issued under
this chapter in the name of the licensee may be likewise revoked or suspended by the director.

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1 Cost Recovery

2 21. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board
3 may request the administrative law judge to direct a licensee found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case.

6 CONSUMER COMPLAINT (HENDRICKSON): 1977 TOYOTA LAND CRUISER

7 22. On or about July 2, 2007, consumer Everett Hendrickson ("Hendrickson")
8 purchased a 1977 Toyota Land Cruiser from Edwin Aguilar ("Aguilar") for \$5,701 through the
9 eBay Internet auction site. The information posted on eBay indicated that the factory installed
10 Toyota 6-cylinder engine on the vehicle had been replaced with a Chevrolet 350 V-8 engine.

11 23. On or about July 5, 2007, Hendrickson took possession of the vehicle from
12 Aguilar. Aguilar gave Hendrickson a vehicle inspection report and stated that the vehicle had
13 passed a smog inspection that day.

14 24. On or about July 6, 2007, Hendrickson reviewed the vehicle inspection
15 report and noted that the engine size was listed as "4.2L" and that the unit was described as a
16 6-cylinder engine. Hendrickson contacted the Bureau and spoke with Bureau Representative
17 Gerald Gean ("Gean"). Hendrickson told Gean he was concerned that the vehicle may have been
18 illegally smogged. Gean made arrangements to have the vehicle inspected at the Consumer
19 Assistance and Referee Center ("CARC").

20 25. On or about July 9, 2007, Bureau Representative Raymond Gottenbos
21 ("Gottenbos") reviewed information from the Bureau's vehicle information database ("VID").
22 The VID data indicated that Respondent had performed a smog inspection on the vehicle on July
23 5, 2007, resulting in the issuance of electronic smog Certificate of Compliance # MS399850C for
24 the vehicle.

25 26. On July 10, 2007, Gean met with Hendrickson at CARC and inspected the
26 vehicle. Gean confirmed that the vehicle was equipped with a V-8 engine. A smog inspection
27 was performed on the vehicle by a referee technician. Hendrickson was later informed that the

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1 vehicle did not pass the inspection due to modified and missing emission control equipment and
2 that the tailpipe emissions exceeded the gross polluter¹ limits.

3 27. On September 11, 2007, Bureau Representatives Gottenbos and Randall
4 Herbst ("Herbst") went to Roadhaus Motorsport and met with Respondent. Respondent gave
5 Gottenbos Invoice # 3042, dated July 5, 2007, which had allegedly been signed by Aguilar, and a
6 vehicle inspection report dated July 5, 2007. Respondent indicated that he performed a smog
7 inspection on the vehicle. During further discussion with Gottenbos and Herbst, Respondent
8 admitted that the 1977 Toyota Land Cruiser was not present when he performed the smog
9 inspection and that he used a different vehicle for the emissions portion of the inspection, a
10 method known as clean-piping². Respondent also admitted that he created Invoice # 3042 at a
11 later date when Aguilar contacted him, stating that the buyer of the vehicle (Hendrickson) was
12 creating a problem. Respondent stated that Aguilar did not sign the invoice, that Aguilar did not
13 bring the 1977 Toyota Land Cruiser to his facility, only the Department of Motor Vehicle
14 registration document, and that Aguilar paid him \$100 for the inspection when his normal price
15 for the inspection was \$58.75.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

28. Respondent's automotive repair dealer registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows:

22 a. Respondent certified under penalty of perjury on the vehicle inspection
23 report that he performed the smog inspection on the 1977 Toyota Land Cruiser in accordance

1. Pursuant to Health & Saf. Code section 39032.5, "gross polluter" means a vehicle with excess hydrocarbon, carbon monoxide, or oxides of nitrogen emissions as established by the department in consultation with the state board.

2. Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping" means the use of a sample of the exhaust emissions of one vehicle in order to cause the Test Analyzer System or Emissions Inspection System to issue a certificate of compliance for another vehicle.

1 with all Bureau requirements. In fact, Respondent used clean-piping methods in order to issue a
2 certificate for the vehicle and did not test or inspect the vehicle as required by Health & Saf.
3 Code section 44012.

4 b. Respondent certified under penalty of perjury on the vehicle inspection
5 report that the 1977 Toyota Land Cruiser had passed inspection and was in compliance with
6 applicable laws and regulations. In fact, the positive crankcase ventilation system, ignition spark
7 controls, carburetor, and vacuum line connections to the sensors and switches were modified or
8 in a modified condition, in addition to other emission related components; the thermostatic air
9 cleaner, fuel evaporative controls, exhaust gas recirculation system, and air pump system were
10 missing; the ignition timing was in a failing condition; and the exhaust emissions were at gross
11 polluter levels. As such, the vehicle would not pass the inspection required by Health & Saf.
12 Code section 44012.

13 c. Respondent certified under penalty of perjury on the vehicle inspection
14 report that the 1977 Toyota Land Cruiser was equipped with a 4.2 liter engine with 6 cylinders.
15 In fact, the original factory installed Toyota 6-cylinder engine had been replaced with a Chevrolet
16 350 V-8 engine.

17 d. Respondent represented on Invoice # 3042 dated July 5, 2007, that a smog
18 check had been performed on the 1977 Toyota Land Cruiser at a cost of \$58. In fact, a smog
19 inspection had not been performed on the vehicle and Aguilar had paid Respondent \$100 to
20 illegally certify the vehicle.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Fraud)**

23 29. Respondent's automotive repair dealer registration is subject to
24 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
25 Respondent committed an act which constitutes fraud, as follows: Respondent issued an
26 electronic smog certificate of compliance for the 1977 Toyota Land Cruiser without performing a
27 bona fide inspection of the emission control devices and systems on the vehicle, thereby

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1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Dishonesty, Fraud or Deceit)**

5 30. Respondent's lamp station and brake station licenses are subject to
6 disciplinary action pursuant to Bus. & Prof. Code section 9889.3, subdivision (d), in that
7 Respondent committed an act involving dishonesty, fraud, or deceit whereby another was
8 injured, as set forth in paragraph 29 above.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Violations of the Motor Vehicle Inspection Program)**

11 31. Respondent's smog check station license is subject to disciplinary action
12 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to
13 comply with provisions of that Code, as follows:

- 14 a. **Section 44012:** Respondent failed to perform the emission control tests
15 on the 1977 Toyota Land Cruiser in accordance with procedures
16 prescribed by the department.
- 17 b. **Section 44015:** Respondent issued an electronic smog certificate of
18 compliance for the 1977 Toyota Land Cruiser without properly testing
19 and inspecting the vehicle to determine if it was in compliance with Health
20 & Saf. Code section 44012.
- 21 c. **Section 44015, subdivision (a)(1):** Respondent issued an electronic
22 smog certificate of compliance for the 1977 Toyota Land Cruiser when, in
23 fact, the emissions control system on the vehicle had been illegally
24 modified or tampered with, as set forth in subparagraph 28 (b) above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 32. Respondent's smog check station license is subject to disciplinary action
5 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to
6 comply with provisions of California Code of Regulations, title 17, as follows:

- 7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
8 issued an electronic smog certificate of compliance for the 1977 Toyota
9 Land Cruiser.
- 10 b. **Section 3340.35, subdivision (c):** Respondent issued an electronic
11 smog certificate of compliance for the 1977 Toyota Land Cruiser even
12 though the vehicle had not been inspected in accordance with section
13 3340.42.
- 14 c. **Section 3340.41, subdivision (c):** Respondent entered false information
15 into the Emission Inspection System by entering vehicle identification
16 information or emission control system identification data for a vehicle
17 other than the one being tested.
- 18 d. **Section 3340.42:** Respondent failed to conduct the required smog tests
19 on the 1977 Toyota Land Cruiser in accordance with the Bureau's
20 specifications.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Dishonesty, Fraud or Deceit)**

23 33. Respondent's smog check station license is subject to disciplinary action
24 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed a
25 dishonest, fraudulent or deceitful act whereby another is injured by issuing an electronic smog
26 certificate of compliance for the 1977 Toyota Land Cruiser without performing a bona fide
27 inspection of the emission control devices and systems on the vehicle, thereby depriving the

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1 People of the State of California of the protection afforded by the Motor Vehicle Inspection
2 Program.

3 **SEVENTH CAUSE FOR DISCIPLINE**
4 **(Violations of the Motor Vehicle Inspection Program)**

5 34. Respondent's advanced emission specialist technician license is subject to
6 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that
7 Respondent failed to comply with provisions of that Code, as follows:

- 8 a. **Section 44012:** Respondent failed to perform the emission control tests
9 on the 1977 Toyota Land Cruiser in accordance with procedures
10 prescribed by the department.
11 b. **Section 44059:** Respondent willfully made false entries on the vehicle
12 inspection report, as set forth in subparagraphs 28 (a) through (c) above.

13 **EIGHTH CAUSE FOR DISCIPLINE**
14 **(Failure to Comply with Regulations Pursuant**
15 **to the Motor Vehicle Inspection Program)**

16 35. Respondent's advanced emission specialist technician license is subject to
17 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in
18 that Respondent failed to comply with provisions of California Code of Regulations, title 17, as
19 follows:

- 20 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
21 issued an electronic smog certificate of compliance for the 1977 Toyota
22 Land Cruiser.
23 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
24 the 1977 Toyota Land Cruiser in accordance with Health & Saf. Code
25 sections 44012 and 44035, and California Code of Regulations, title 17,
26 section 3340.42.
27 c. **Section 3340.41, subdivision (c):** Respondent entered false information
28 into the Emission Inspection System by entering vehicle identification

1 information or emission control system identification data for a vehicle
2 other than the one being tested.

- 3 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on
4 the 1977 Toyota Land Cruiser in accordance with the Bureau's
5 specifications.

6 **NINTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit)**

8 36. Respondent's advanced emission specialist technician license is subject to
9 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
10 Respondent committed a dishonest, fraudulent or deceitful act whereby another is injured by
11 issuing an electronic smog certificate of compliance for the 1977 Toyota Land Cruiser without
12 performing a bona fide inspection of the emission control devices and systems on the vehicle,
13 thereby depriving the People of the State of California of the protection afforded by the Motor
14 Vehicle Inspection Program.

15 **OTHER MATTERS**

16 37. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the
17 Director may refuse to validate, or may invalidate temporarily or permanently, the registrations
18 for all places of business operated in this state by Respondent Ronald Urban Mugnaini, also
19 known as Ronald Mugnaini, owner of Roadhaus Motorsport, upon a finding that said Respondent
20 has, or is, engaged in a course of repeated and willful violations of the laws and regulations
21 pertaining to an automotive repair dealer.

22 38. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station
23 License Number RC 125948, issued to Respondent Ronald Urban Mugnaini, also known as
24 Ronald Mugnaini, owner of Roadhaus Motorsport, is revoked or suspended, any additional
25 license issued under this chapter in the name of said licensee may be likewise revoked or
26 suspended by the Director.

27 39. Pursuant to Bus. & Prof. Code section 9889.9, if Official Lamp Station
28 License Number LS 125948 and/or Official Brake Station License Number BS 125948, issued to

Respondent Ronald Urban Mugnaini, also known as Ronald Mugnaini, owner of Roadhaus Motorsport, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

40. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist Technician License Number EA 028104, issued to Respondent Ronald Urban Mugnaini, also known as Ronald Mugnaini, is revoked or suspended, any additional license issued under this chapter in the name of said licensee may be likewise revoked or suspended by the Director.

P R A Y E R

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration Number ARD 125948, issued to Ronald Urban Mugnaini, also known as Ronald Mugnaini, owner of Roadhaus Motorsport;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Ronald Urban Mugnaini, also known as Ronald Mugnaini;

3. Revoking or suspending Smog Check Station License Number RC 125948, issued to Ronald Urban Mugnaini, also known as Ronald Mugnaini, owner of Roadhaus Motorsport;

4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 028104, issued to Ronald Urban Mugnaini, also known as Ronald Mugnaini;

5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Ronald Urban Mugnaini, also known as Ronald Mugnaini;

6. Revoking or suspending Official Lamp Station License Number LS 125948, issued to Ronald Urban Mugnaini, also known as Ronald Mugnaini, owner of Roadhaus Motorsport;

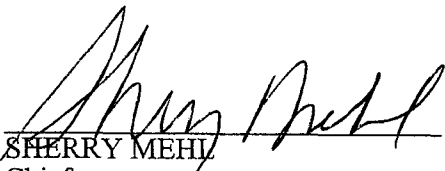
1 7. Revoking or suspending Official Brake Station License Number
2 BS 125948, issued to Respondent Ronald Urban Mugnaini, also known as Ronald Mugnaini,
3 owner of Roadhaus Motorsport;

4 8. Revoking or suspending any additional license issued under Articles
5 5 and 6 of Chapter 20.3 of the Business and Professions Code in the name of Ronald Urban
6 Mugnaini, also known as Ronald Mugnaini;

7 9. Ordering Respondent Ronald Urban Mugnaini, also known as Ronald
8 Mugnaini, individually and as owner of Roadhaus Motorsport, to pay the Director of Consumer
9 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 125.3;

11 10. Taking such other and further action as deemed necessary and proper.

12 DATED: 7/28/08.

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15 SHERRY MEHL
16 Chief
17 Bureau of Automotive Repair
18 Department of Consumer Affairs
19 State of California

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27 Complainant

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